

Internal Revenue Service
Appeals Office
312 Elm Street, Suite 2330
Cincinnati, OH 45202-2763

Department of the Treasury

Taxpayer Identification Number:
E

Release Number: 201205010
Release Date: 2/3/2012
Date: November 10, 2011

Person to Contact:

Tel:
Fax:

A
B
C

Tax Period Ending:

UIL: 501.32-00
501.33-00

Certified Mail

Dear

This is our final adverse determination regarding your request for recognition of exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective August 5, 2009, the date of your incorporation in the State of D.

Our adverse determination was made for the following reason(s):

Your proposed activities will result in the net earnings of your organization substantially benefitting a related for-profit corporation, its officers and shareholders. Because more than an insubstantial part of your proposed activities result in private benefit to the related corporation, its officers and shareholders, you are not operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

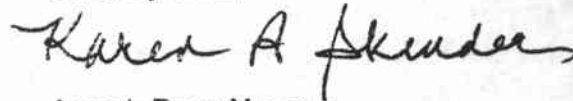
If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this

letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

A handwritten signature in cursive script that reads "Karen A. Skinder". The signature is written in dark ink and is positioned above the printed name.

Appeals Team Manager
Karen A. Skinder

Enclosure: Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: February 18, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Officer
C = Officer
N = Related For-Profit
O = State
P = Date
S = Country
T = Country

UIL:

501.32-00
501.33-00

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below. This letter supersedes our letter dated December 21, 2010, and incorporates your protest as well as the Service's response to your protest.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code?

No, for the reasons outlined below.

Facts

The evidence submitted indicates that you were incorporated in the State of O on P. Your Articles of Incorporation state "The purpose of the corporation is to stabilize world wide organic food supply, provide guidance and funding for worldwide food safety programs, to build schools, assist with hunger programs, and educate on proper nutrition in less advantage countries."

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

Your Bylaws state your purpose is "Providing Harvest Based Financing through Program Related Investments; to provide guidance and funding for worldwide food safety programs; to provide funding for education and nutrition programs and facilities in under privileged communities."

Your Bylaws also state that "Membership shall consist only of the members of the Board of Directors." Your Board of Directors consists of B and C.

You are associated with N, a for-profit corporation, who is a supplier of ingredients in the US market. B is Chief Executive Officer and majority stockholder of N. C is Chief Financial Officer of N. You and N have shared resources limited to office space, personnel, and other common resources, for which N pays. You and N will have separate and distinct accounting records and bank accounts. You will be advertised by a link on N's internet website.

Your activities consist primarily of a harvest based loan program, which provides financing to farmers and growers of foods in third world countries. Your harvest based loan program will be made available to suppliers, farmers and co-ops that are attempting to convert land into based farming or providing food supplies to the United States. This working capital will allow the farmers to bring their land and equipment into compliance, grow crops, harvest crops, and process the harvested materials to meet United States Food Safety Standards. In addition, you will help in designing food processing facilities to allow growers to build a facility that complies with US food handling standards. This will allow stabilization in the supply and pricing of foods in the US market. You state that suppliers of food products in the US are reluctant to create products with an unstable supply and price points.

Recipients selected will not qualify for traditional financing, nor do they have enough credit available due to a lack of lending ability against future products. You indicate you will target at-risk, under-developed, under-privileged, and low-income communities which will generally have a high percentage of minorities and very high crime rates. Recipients are selected on the basis of awareness and need. You state the grower will be required to complete a standard commercial credit application and provide personal financial statements. A grant proposal will be required of all recipients of grants or loan funds. Use of funds must fall within your allowable uses according to your mission. You will make periodic site visits during construction phases as well as follow up visits to ensure food safety and training programs are being adhered to. A complete budget and final report of use of funds will be required of all recipients.

The harvest based loans will be collateralized by a secured supply contract with purchase guarantees with N to reduce risk to you. The recipients will repay loans and interest in the form of product shipments to N, who, in turn, directs payment for the loans with proper interest to you. N will continue to make payments to you until the loan amount plus interest is paid in full. After the loan is paid, N will continue to receive product shipments from recipients, and recipients receive additional payments from N for the remainder of the contract period. The harvest based loans and purchase contracts are generally for one crop year. After the loan and interest is repaid, the relationship between you and the recipient is complete. You also indicated that it is likely the recipients will continue their relationships with N for future contract periods.

You stated you have loaned funds to farmers at % interest. The rate of % was based on the conventional financing rate plus a premium of % due to recognized additional risk involved. You have successfully funded two contracts to date to farmers in S and T. Recipients received advanced funds to support their farming operations and provided a significant food supply to the United States through their purchase contracts with N.

Loan recipients can repay the loan by means other than the purchase contract with N. However, the purchase contract is an obligation between the recipient and N which will represent an entire crop season. You state the price of goods is based on the purchase contract pre-negotiated between N and the farmer. N will issue a purchase order to the farmer that will contain the agreed upon quantities of product as well as the purchase price. After N receives the product, they will mark up the products, and sell them. The mark up is based on market conditions, and profit is generated to N.

You will raise funds by offering an investment fund allowing investors to earn a return on investment. Individuals and corporations will be sought to loan funds to you. Those providing funds can then participate in a socially responsible program while simultaneously investing their holdings in an account that provides a return on investment. Investors will be repaid their initial investment plus interest. You will offer investors a return of %. You retain %, the difference of % and %. You maintain a portion of the proceeds for use in your mission to build schools, provide nutrition education, and fund hunger programs.

It is possible that investors may have a relationship with you or N, as customers or staff may want to invest money to earn a return and support a cause they believe in, but board members will be precluded from participating in this program. You stated that you will follow the rules of the Securities Exchange Commission. Invested funds will not be considered donations and will be segregated from donated funds. You will also accept donations and grants from charitable organizations, foundations, individuals, corporations, and the government.

Your expenses consist primarily of interest to note holders, facility consultants, inspections, and travel. In addition, you also have expenses budgeted for food and seed retention programs in South America and school building programs.

Law

IRC section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 74-587, 1974-2 CB describes a nonprofit organization formed to relieve poverty, eliminate prejudice, reduce neighborhood tensions, and combat community deterioration through a program of financial assistance in the form of low-cost or long-term loans to, or the purchase of equity interests in, various business enterprises in economically depressed areas is exempt under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979). The Tax Court held that an organization that was essentially controlled by a separate commercial entity was operated for a substantial non-exempt purpose where it promoted a body of knowledge owned by that commercial entity. Whether the agreements between the parties reflected an arm's length negotiation was irrelevant to the analysis. Relevant factors included that the for-profit entity, through contractual arrangements, exerted "considerable control" over the franchisee's activities, in matters such as fees, training, scheduling, and management; that the for-profit entity's existence depended on the tax-exempt status of the franchisee, and that it was thus trading on the letter's exempt status; and that the for-profit entity benefited substantially from the franchisee's activities.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a nonprofit corporation that conducted continuing medical education tours. The petitioner had three trustees. Mr. Helin, who was a shareholder and the president of H & C Tours, a for profit travel agency. Mr. Regan, an attorney, and a third director who was ill and did not participate. Mr. Helin served as executive director. The petitioner used H & C Tours exclusively for all travel arrangements. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for religious, charitable, or other purposes specified in the statute, and your net earnings inure to the benefit of private individuals.

Although you meet the organizational test, you do not satisfy the requirements of section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because you do not meet the operational test.

You are not "operated exclusively for one or more exempt purposes" as set forth in section 1.501(c)(3)-1(c)(2) of the regulations because your net earnings inure to the benefit of N and therefore, N's shareholders. The facts show that your officers, B and C, are also officers of N, and B is N's majority shareholder. As a result of your loans, N is receiving a purchase contract with the farmer for the entire crop year. N has an interest in making sure, through site visits, that crops are produced in the right quantity and quality to satisfy the demands of N's customers. N pays you for supplies received, then marks up the price of the supplies and sells them to outside parties. N retains the profit from this mark up. Thus, as a result of N's relationship with you, N receives the benefit of increasing their supplies, which results in increased income to N and N's shareholders. This situation leads to inurement of earnings accruing to B and C through N.

You are also not serving exclusively exempt purposes as described in section 1.501(c)(3)-1(c)(2) of the regulations because your net earnings inure to the benefit of private investors. This is evidenced by the fact that you have individuals and corporations loan money to you, and in return, you will pay them a 5% return on their investment. Thus, investors are able to earn profit through you, which is a private benefit to the investor.

You are not operating exclusively for educational purposes as described in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations because you serve private interests, including benefiting the persons who created you. You explain that N needs crops to satisfy demands from customers. You state your activities will increase the availability of [redacted] foods which are currently in short supply, allowing market stabilization in supply and pricing. Since N is a supplier of [redacted] goods in the US, N benefits substantially from your activity of finding, developing, and financing potential suppliers of [redacted] goods, and from a stabilized market supply and pricing. Since your board members are officers of N, they also benefit substantially from you.

You are like the organization described in Rev. Rul. 74-587, 1974-2 CB in that you relieve poverty and combat community deterioration through low-cost or long-term loans. While you do have the charitable purpose of relieving poverty and combating community deterioration, you also have the substantial non-exempt purposes of furthering the private interests of your board

members, B and C, through their corporation N, and providing private benefit to your investors.

You are like Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279 (1945), in that you are not "operated exclusively" for exempt purposes. You are substantially involved in furthering the private interests of your board members, B and C, and their corporation N, as well as your investors. Like the organization in the court case, this single nonexempt purpose destroys your claim for exemption under section 501(c)(3) of the Code.

You are similar to est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), because you use the nonprofit as an "instrument" to further your for-profit business. You are controlled by N through your board members, B and C. N is able to use you to locate and develop potential suppliers of goods to further their for-profit business, thus benefitting substantially. Even though loans and purchase contracts are based on market rates, N still receives the private benefit of an increased, stabilized base of of goods. N also receives the benefit of not having to compete with other similar for-profits for the business received by the recipients of your loans. The fact that the recipients of your loans are required to contract with N substantiate this.

You are similar to the corporation described in International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), because N and by extension, B and C, benefit substantially from the manner in which your activities are carried on. Like the organization in this court case, your board members are also principles of a related for-profit company, N. Also like the court case, a competitive bid process is not used in conducting your activities. The fact that the recipients of your loans are required to contract with N substantiates this and shows that N receives substantial private benefit because of your activities.

Applicant's Position

You state that your loans will be to individuals in undeveloped, low-income communities who are unable to obtain financing through traditional sources. By providing financing, you will operate for the charitable purpose of helping these at-risk individuals improve their financial position and increase the quality and quantity of nutritious food available in low-income areas. In addition, you state that you will operate for educational purposes by building schools and providing educational programs about nutrition.

You also state that N stands to gain no benefit from their position as the holder of the purchase contract. You state this is because N is contracting with the supplier to purchase their crops at fair market value and the crops are then delivered. N will direct payments to you until the loan is satisfied and the collateral is released. N will have no other special arrangements that benefit the company.

Service Response to Applicant's Position

Although your loan program does have some charitable factors, including providing financing to at-risk individuals in low income communities not eligible for traditional financing, you also provide substantial private benefit to individuals. Your operations result in substantial private benefit to B and C, through N. Even if the contracts between N and the recipients of your loans

are at fair market value, N is receiving substantial private benefit because they are receiving increased business and revenue as a result of your activities. Without you and your loans to the farmers, N would not receive the benefit of the increased revenue made as a result of the contracts with the farmers. This shows that a substantial part of your program results in private benefit to N. Since B and C are officers and shareholders of N, and also members of your board of directors, this also constitutes inurement.

Applicant's Protest

You submitted a protest which included three changes. First, you describe the elimination of the investor part of the loan program. Second, you have solicited new board members from the local and food community to replace B and C as directors. Third, you proposed to amend your operating statement to prohibit any officers, employers, or shareholders of N to serve on your board of directors. In addition, this amendment will state that none of your transactions can be for any direct or indirect benefit of N, its shareholders or officers or family members.

Service Response to Applicant's Protest

First, the elimination of the investor part of the loan program will eliminate the private benefit to the outside investors. However, N, and B and C, will still receive substantial private benefit through its relationship with you. The elimination of this program does not alleviate N's benefit of increased suppliers, increased supplies, and any resulting revenues.

Second, the changing of your board of directors to individuals unrelated to N does not eliminate the substantial private benefit being received by N through your operations. Even considering the board changes, you still are not operating exclusively for purposes as described in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations because you serve private interests of both N, and B and C, the persons who created you. Your operations will allow N to use your funding to locate and develop potential suppliers of goods, limit their risk exposure, stabilize market supply and pricing, and increase revenues through sales. Even with an unrelated board, the substantial private benefit to N and N's officers and shareholders, B and C, is still present.

Third, your proposal to amend your operating statement will not eliminate the substantial private benefit to N, and N's officers and shareholders. Though these policies have not yet been adopted, if they were adopted, they would not be sufficient to fix the private benefit that occurs as a result of your operations. Simply having a policy stating that none of your activities will benefit N, its shareholders officers or family members does not prevent the activities which result in private benefit from occurring. It remains that N, and N's officers and shareholders, B and C, will benefit from your operations, with or without this policy.

Therefore, after considering the changes to your operations, it remains that a substantial portion of your programs result in substantial private benefit to N and N's officers and shareholders, B and C. This substantial private benefit is a substantial non-exempt purpose, and therefore, precludes you from exemption under section 501(c)(3).

Conclusion

Based on the information provided, it is clear that your net earnings benefit N and N's officers and shareholders B and C. As a result, we are not able to conclude that you are operated exclusively for public rather than private purposes. Despite any charitable and educational purposes your activities may achieve, you do not qualify for tax exemption because more than an insubstantial part of your operations result in private benefit to N and N's officers and shareholders, B and C.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of*

Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892

Letter 4036 (CG) (11-2005)
Catalog Number 47630W